

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 604 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

SENJARIYA BROTHERS

Appearance:

1. Criminal Appeal No. 604 of 1991
Mr.A.Y.Kogje, learned A.P.P. for Petitioner No. 1
MR AN PATEL for Respondent No. 1,3
NOTICE SERVED for Respondent No. 2,4
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CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 01/08/2003

C.A.V. JUDGEMENT

1. By means of filing this appeal under Sec. 378 of

the Criminal Procedure Code, 1973 the State of Gujarat has challenged the judgment and order dated May 30, 1991 rendered by the learned J.M.F.C. (First Class), Gondal District Rajkot in Criminal case no. 430/96 acquitting the respondents under Sec. 7 & 16 of Prevention of Food Adulteration Act, 1954. (for short "the Act")

2. The short facts of the appellant's case are as under :

It is the case of the complainant that he along with two panchas went to the shop of respondents where the respondents were selling chilly powder and the complainant collected samples of chilly powder and sent it to Public Analyst, Bhuj. On receiving the report from Public Analyst, Bhuj, it was found that the chilly powder was adulterated. On the chargesheet being read to the respondents, they pleaded not guilty and on recording of evidence and hearing the arguments of the parties, the learned J.M.F.C. (F.C.), Gondal District Rajkot acquitted the respondents of the charges charged against them. It is against this judgment and award that the State has preferred the instant appeal.

3. Mr.A.Y.Kogje learned A.P.P. for the State has only limited submission that learned Magistrate has erred in law in coming to the conclusion that the sanction produced at exh. 24 in the present case is invalid and illegal. Further more, the learned Magistrate has also erred in law in coming to the conclusion that at the time of giving sanction to prosecute, the authority has not applied its mind and therefore sanction to prosecute is illegal as the provisions of Section 20 of the said Act have not been followed in the present case and therefore also the present appeal requires to be allowed. It was also urged that the judgment relied on by the learned Magistrate reported in 1991 Cri.Law Reporter (Guj.) page 496 is not applicable to the facts of the present case. Therefore, in the submissions of learned A.P.P. for the State, the learned Magistrate ought to have held that sanction exh. 24 to prosecute in the present case is legal and valid and as per the provisions of Section 20 of the said Act.

4. In support of his submissions, learned A.P.P. has relied on the judgment of the Apex Court in case of Suresh H Rajput and others V/s Bhartiben Pravinbhai Soni and others reported in (1996) 7 S.C.C. 199 and submitted that sanction granted by the Local (Health) Authority after going through the report of the Public Analyst and other relevant material, sanction is not invalid. It was held that sanctioning authority is not required to weigh

pros and cons and then to find whether the case could end in conviction or acquittal.

5. Against the aforesaid submissions, learned advocate Mr. Patel has more or less relied on factual arguments rather than legal arguments and submitted that almost 18 years have passed and that the date of offence is 14.2.86. That accused were acquitted on 30.5.91 and now the appeal has come up for final hearing in 2003. Moreover, the respondents have also closed their business and therefore also relying on judgment of Apex Court in case of Noratan Mal V/s State of Rajasthan reported in 1995(1) of Prevention of Food Adulteration Cases page 126, the court should not disturb the order passed by the learned Magistrate. However, at last the learned advocate thought it fit to argue the matter on merits. Therefore, he relied on other three judgments which are as under :

1. Adda Kasivisweswara Rao V/s State of A.P. reported in 1990(2) of Prevention of Food Adulteration Cases page 267.
2. Deepchand Agarwala @ Deepak Agarwalla V/s State of Orissa reported in 1995(1) of Prevention of Food Adulteration Cases page 14.
3. Mahadeo V/s State reported in 1972 of Prevention of Food Adulteration Cases page 186.

6. I have given anxious consideration on the arguments advanced by the learned advocates of the parties. So far as sanction order produced at exh. 24 is concerned, on perusal of the original sanction letter it can be said that Local (Health) Authority has not filled in the blanks. In fact it is a typed order. On perusal of the same, it appears that the local (health) authority and Additional Director, Food and Drugs Administration, Rajkot has perused the papers and report of public analyst before granting sanction under Sec. 20 of the said Act.

7. The complainant Mr. D.V. Mehta, Gondal has also included the name of other partner of respondent no. 1 firm who was not present at the time of alleged offence. In no case, it can be said that the permission granted to prosecute the present respondents is bad in law. So far as the case of Mahadeo (supra) is concerned, it was held that the consent performed by the Chairman was nothing but the mechanical act of rubber stamping as it were. Such a written consent is not one that is contemplated by law and cannot be taken as a valid written consent for the lodging of a complaint by another within the meaning

of Section 20 of the Act. In case of Deepchand Agarwala @ Deep Agarwalla (supra), the sanctioning authority in the sanction order has only stated that he perused the prosecution report and the relevant documents. In such view of the matter, the Court came to the conclusion that it cannot be held that requirement of Section 20 had been satisfied in this particular case in granting sanction in favour of prosecution. In case of Adda Kasivisweswara Rao (supra), it was held that the sanctioning authority must first state what is adulterated as per the report of the Public Analyst and what material it has perused and then what are the reasons for granting the sanction in the light of the public interest and if there is any lacuna in the sanction order, then the entire prosecution vitiates and the accused is entitled to its benefit. None of the authorities apply to the facts of the present case. In view of the limited submission made by the learned advocate of the respondents, the appeal is bound to succeed.

8. While allowing any such acquittal appeal, court is bound to hear the accused on the point of what they want to say regarding sentence to be awarded to them. However, in catena of decisions, the Apex court and this Court has held that when the court is awarding minimum sentence it is not bound to hear the accused. However, in the interest of justice, I would like to hear the learned advocate of the respondents before awarding any sentence.

(SHARAD D DAVE, J)

Heard the learned advocates for the parties on the point of sentence. Learned Advocate for the respondents submitted that as it is their first offence, benefit of Probation of Offenders Act, 1958 be granted to them. It is also prayed that their sentence be suspended for two months. Learned A.P.P.Mr.Kogje submitted that strict sentence be awarded to the respondents.

I have given anxious thought before awarding sentence to the respondents. It is fact that 18 years have passed and therefore as per Sec. 16(1)(a)(i), minimum sentence prescribed under the law which is six months simple imprisonment and fine of Rs.1,000/- is awarded to the respondents. The respondents are directed to undergo simple imprisonment for six months and fine of Rs.1,000/- each, in default one month simple imprisonment. The office is directed to inform the concerned court for issuance of warrant against the respondents, except respondent no. 4.

Taking into consideration the request of the learned advocate of the respondents, this judgment is stayed for one month from today.

(SHARAD D DAVE, J)

srilatha